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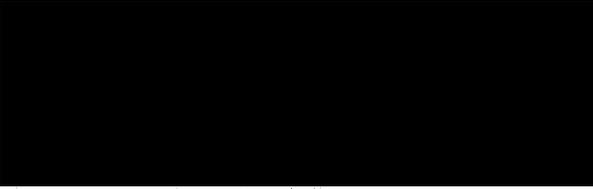
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U.S. Citizenship
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FILE: [Redacted]
EAC 03 141 52027

Office: VERMONT SERVICE CENTER

Date: DEC 03 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native of the former Soviet Union and citizen of Armenia who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that he has been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse and that he entered into the marriage in good faith.

On appeal, counsel for the petitioner states that “[d]enial is based on lack of evidence of physiological [sic] injury caused [by] the USC spouse. Alien has sought the services of medical professional to document the injury and needs time to obtain a written report.” Counsel requested 60 days to submit a brief and/or additional evidence. Four months have lapsed since the filing of the appeal and nothing more has been submitted for inclusion in the record.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

- (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
- (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien’s spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
- (C) Is residing in the United States;
- (D) Has resided . . . with the citizen or lawful permanent resident spouse;
- (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the

marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and].

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

According to the evidence on the record, the petitioner entered the United States as a B-2 visitor for pleasure on December 28, 1992. The petitioner filed an application for asylum that was denied on January 28, 1999 for failure to appear for the interview. The petitioner was placed in removal proceedings on February 4, 1999. On June 20, 1999, the petitioner married [REDACTED] a United States citizen, in Los Angeles, California. The petitioner's wife filed a Form I-130 petition on the petitioner's behalf on December 30, 1999. The district director denied the Form I-130 petition on June 19, 2000 due to abandonment. The petitioner initiated divorce proceedings and his marriage to [REDACTED] was terminated on December 16, 2002. The petitioner filed a Form I-360 self-petition on March 31, 2003, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

Because the petitioner furnished insufficient evidence to establish that he had been battered or subjected to extreme cruelty by his citizen spouse, he was requested on March 22, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. The discussion will not be repeated here.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

Battery or extreme cruelty. For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation . . . shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been

perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

Abuse. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abused victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen spouse. The evidence consists of the following:

- The petitioner's declaration and supplementary declaration.
- A declaration of [REDACTED] a friend of the petitioner.
- A declaration of an acquaintance of the petitioner, [REDACTED]
- A declaration from the petitioner's friend, [REDACTED]
- A declaration from the petitioner's landlord, [REDACTED]
- A business card of a police person.
- Photographs of drug paraphernalia and an unsanitary living room.

It is noted that the petitioner failed to submit reports and affidavits from police, judges, court officials, medical personnel, counselors, social workers or other social service agency personnel. The petitioner failed to seek refuge in a shelter for the abused. The petitioner failed to submit evidence that he sought psychological treatment for any abuse he endured. He did not obtain an order of protection against his spouse.

According to the petitioner's statements, his wife started using drugs after they married. Several friends of the petitioner wrote declarations stating that the petitioner had informed them that his wife had a drug problem and that they had seen his wife on the streets at night alone. The petitioner stated that his wife refused to clean the apartment or the cat's litter box. He further stated that once his wife threw a chair at the door he used to exit their apartment.

The director determined that the treatment the petitioner received from his wife is not abuse or extreme cruelty as defined in the regulations. The AAO concurs. The conduct described does not rise to the level of extreme

cruelty. The evidence is insufficient to establish that the petitioner was abused or the subject of extreme cruelty by his citizen spouse during their marriage.

Because the petitioner furnished insufficient evidence to establish that he had entered into the marriage in good faith, he was requested on March 22, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish the bona fides of his marriage. The director noted that the petitioner had married his citizen spouse after the petitioner was placed in removal proceedings; hence, the petitioner was required to submit a request for a bona fide marriage exemption and that the request must state the reason for seeking the exemption and must be supported by clear and convincing documentary evidence that establishes that the marriage was entered into in good faith and not entered into for the purpose of procuring an immigration benefit. The director listed the types of evidence the petitioner could submit to establish the bona fides of his marriage.

The evidence of the bona fides of the marriage consists of the petitioner's declarations, wedding photographs and the declarations of friends stating that they witnessed the marriage. The petitioner failed to submit evidence such as joint bank accounts, joint leases or mortgages, insurance policies, cancelled checks, joint bills, wills, or joint tax returns. No children were born of the marriage. The evidence is insufficient to establish the bona fides of the petitioner's marriage to the citizen.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.